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261 - IDENTIFICATION AND LISTING OF
HAZARDOUS WASTE
Subpart A - General

261.1 Purpose and Scope

(a) This part identifies those solid wastes which are subject to regulation as hazardous wastes under Regulations R.61-79.124, .262 through .266, .268, .270, and 40 CFR 271, and which are subject to the notification requirements of the South Carolina

Hazardous Waste Management Act 44-56-120 and section 3010 of RCRA. In this part: (11/90; 12/92)

(1) Subpart A defines the terms "solid waste" and "hazardous waste," identifies those wastes which are excluded from regulation under R.61-79.262 through 266, 268, and R.61-270, and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

(2) Subpart B sets forth the criteria used by the Department to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Subpart C identifies characteristics of hazardous waste.

(4) Subpart D lists particular hazardous wastes.

(b)(1) The definition of solid waste contained in this part applies only to wastes that also are hazardous for purposes of the regulations implementing the South Carolina Hazardous Waste Management Act 44-56-10 et seq and Subtitle C of RCRA. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled (12/92; 12/93).

(2) This part identifies only some of the materials which are solid wastes and hazardous wastes under SCHWMA 44-56-10 et seq. and sections 3007, 3013, and 7003 of RCRA. A material which is not defined as a solid waste in this part, or is not a hazardous waste identified or listed in this part, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of SCHWMA 44-56-90 and sections 3007 and 3013 of RCRA, the Department has reason to believe that the material may be a solid waste within the meaning of section 44-56-20(6) of the S.C. Code of Laws of 1976, as amended or a solid waste within the meaning of section 1004(27) of RCRA and a hazardous waste within the meaning of section 1004(5) of RCRA; or (11/90, 11/99)

(ii) In the case of SCHWMA 44-56-50 or RCRA section 7003, the statutory elements are established.

(c) For the purposes of sections 261.2 and 261.6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in 260.10;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated.

Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

6) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under section 261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal. (9/98)

(10) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related

materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (261.4(a)(13)). (9/98)

(11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings. (9/98)

(2) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal. (9/98)

(d) Used oil is subject to the applicable requirements of 266 only. (6/89; 12/92)

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(a) (1) A solid waste is any discarded material that is not excluded by section 261.4(a) or that is not excluded by variance granted under 260.30 and 260.31.

(2) A discarded material is any material which is (12/92):

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section; or (9/98)

(iv) A "military munition" identified as a solid waste in 266.202. (9/98)

(b) Materials are solid waste if they are abandoned by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (4) of this section.

(1) Used in a manner constituting disposal.

(i) Materials noted with an "x" in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in section 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with an "x" in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in section 261.33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with an "x" in column 3 of Table 1 are solid wastes when reclaimed. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed. (11/99, 8/00, 6/03).

(4) Accumulated speculatively. Materials noted with an "x" in column 4 of Table 1 are solid wastes when accumulated speculatively.

261.2 Table 1 Summary of definitions of Solid Waste				
[Note: The terms "spent materials," "sludges," "by-products," and "scrap metal" are defined in 261.1.] (11/99)	Use Constituting Disposal 261.2(c)(1) (1)	Energy Recovery/ Fuel 261.2(c)(2) (2)	Reclamation 261.2(c)(3) (8/00)(except as provided in 261.4(a)(17) for mineral processing secondary metals) (3)	Speculative Accumulation 261.2(c)(4) (4)
Spent Materials	(x)	(x)	(x)	(x)
Sludges (listed in Section 261.31 or .32)	(x)	(x)	(x)	(x)
Sludges exhibiting a characteristic of hazardous waste	(x)	(x)	---	(x)
By-products (listed in Section 261.31 or .32)	(x)	(x)	(x)	(x)
By-products exhibiting a characteristic of hazardous waste	(x)	(x)	---	(x)
Commercial chemical products listed in Section 261.33	(x)	(x)	---	---
Scrap metal other than excluded scrap metal (see 261.1(c)(9))	(x)	(x)	(x)	(x)

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria: (12/92, 12/93)

(i) The material must contain a bromine concentration of at least 45%; and (12/93)

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and (12/93)

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping). (12/93)

(3) The Department will use the following criteria to add wastes to that list (12/92):

(i) (A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in Appendix VIII of 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed or land disposed; or (5/96)

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 261.4(a)(17) apply rather than this paragraph. (5/96, 11/99; 8/00)

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1)(i) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section. (12/93, 11/99)

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing the SC Hazardous Waste Management Act Sections 44-56-10 et seq. and Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they

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meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so (12/93, 11/99).

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(a) A solid waste, as defined in 261.2, is a hazardous waste if: (11/99)

(1) It is not excluded from regulation as a hazardous waste under 261.4(b); and (11/99)

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in subpart C of this part. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under subpart C is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I to 261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred, or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture. (11/90, 12/93, 11/99)

(ii) It is listed in subpart D and has not been excluded from the lists in subpart D of this part under 260.20 and 260.22.

(iii) [Reserved 6/02]

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from paragraph (a)(2) of this paragraph under 260.20 and 260.22, paragraph (g) of this section, or paragraph (h) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under the S. C. Pollution Control Act Section 48-1-10 et seq., of the S. C. Code of Laws of 1976, as amended and under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and: (11/90; 12/93, 6/02)

(A) One or more of the following solvents listed in section 261.31 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or (5/96)

(B) One or more of the following spent solvents listed in Section 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste No. K170), spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or (8/00)

(D) A discarded commercial chemical product, or chemical intermediate listed in section 261.33, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph (a)(2)(iv)(D), "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or (12/93)

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in subpart D of this part, provided, that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of

the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or (5/96)

(F) One or more of the following wastes listed in 261.32-wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)-Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or (5/96)

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in 261.32-organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).- Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter. (5/96)

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter). EPA Publication SW-846, Third Edition, is available for the cost of \$110.00 from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954. 202-783-3238 (document number 955-001-00000-1). (11/99)

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed. (11/99)

(B) The rebuttable presumption does not apply to used oils contaminated with

chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units. (11/99)

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in subpart D of this part, when the waste first meets the listing description set forth in subpart D of this part.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in subpart D is first added to the solid waste. (8/00)

(3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in subpart C of this part.

(c) Unless and until it meets the criteria of paragraph (d) of this part:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.) (6/02, 6/03)

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

(B) Waste from burning any of the materials exempted from regulation by section 261.6(a)(3)(iii) and (iv) (12/92; 5/96; 8/00).

(C) (1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in paragraphs (6), (7), and (13) of the definition for Industrial furnace" in 260.10), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels

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identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements. (12/92; 12/93)

Constituent	Maximum for any single composite sample (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70.
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70.0

(2) A one-time notification and certification must be placed in the facility's files and sent to the Department for K061, K062, or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the Department on an annual basis if such changes occur. Such notification and certification should be sent to the

Department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." (12/93; 5/96)

(D) Biological treatment sludge from the treatment of one of the following wastes listed in 261.32 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157). (10/01)

(E) Catalyst inert support media separated from one of the following wastes listed in 261.32 Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrotreating catalyst (EPA Hazardous Waste No. K172). (8/00)

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in subpart C of this part. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of part 268, even if they no longer exhibit a characteristic at the point of land disposal) (12/92).

(2) In the case of a waste which is a listed waste under subpart D of this part, contains a waste listed under subpart D of this part or is derived from a waste listed in subpart D of this part, it also has been excluded from paragraph (c) under 260.20 and 260.22.

(e) For the purposes of this regulation the wastes listed in Appendix XI will be considered hazardous.

(f) Notwithstanding paragraphs (a) through (d) of this section and provided the debris as defined in part 268 does not exhibit a characteristic identified at subpart C of this part, the following materials are not subject to regulation under 260, 261 to 266, 268, or 270: (12/93)

(1) Hazardous debris as defined in part 268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 268.45; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and

convincing evidence that the material meets all of the exclusion requirements; or (12/93)

(2) Debris as defined in part 268 that the Department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste. (12/93)

(g) (1) A hazardous waste that is listed in subpart D of this part solely because it exhibits one or more characteristics of ignitability as defined under 261.21, corrosivity as defined under 261.22, or reactivity as defined under 261.23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in subpart C of this part. (6/02)

(2) The exclusion described in paragraph (g)(1) of this section also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in subpart D of this part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section; and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in subpart D of this part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (c)(2)(i) of this section.

(3) Wastes excluded under this section are subject to part 268 of this chapter (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under 261.4(b)(7) and a hazardous waste listed in Subpart D solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C for which the hazardous waste listed in Subpart D was listed. (6/03)

(h) (1) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of 266, Subpart N ("eligible radioactive mixed waste"). (6/02)

(2) The exemption described in paragraph (h)(1) of this section also pertains to:

(i) Any mixture of a solid waste and an eligible radioactive mixed waste; and

(ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

(3) Waste exempted under this section must meet the eligibility criteria and specified conditions in 266.225 and 266.230 (for storage and treatment). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

261.4 Exclusions

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 48-1-10 et seq., of the S. C. Code of Laws of 1976, and section 402 of the Clean Water Act, as amended.

(12/93)

[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment] (12/92).

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Section 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9) (12/92)

(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in paragraphs (a)(9)(i) and (a)(9)(ii) of this section, so long as they meet all of the following conditions: (11/99)

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose; (11/99)

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both; (11/99)

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases; (11/99)

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in part 265, subpart W of this chapter, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and (11/99)

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the appropriate Department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Department for reinstatement. Department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur. (11/99)

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in section 261.24 of this part when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point

they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar. (12/93, 6/04)

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery. (12/93)

(12) (i) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under subpart D of this part, are designated as F037 listed wastes when disposed of or intended for disposal. (5/96, 9/98; 8/00)

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.) Recovered oil does not include oil-bearing hazardous wastes listed in subpart D of this part; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 40 CFR 279.1. (8/00)

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled. (9/98)

(14) Shredded circuit boards being recycled provided that they are: (9/98)

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates. (11/99)

(16) Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of 261.38. (11/99, 8/00)

(17) Spent materials (as defined in 261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing, or by beneficiation, provided that: (11/99; 8/00, 6/03)

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values; (6/03)

(ii) The spent material is not accumulated speculatively; (6/03)

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials. (8/00, 6/03)

(iv) The Department may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion. (6/03)

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for

assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs. (6/03)

(C) Before making a determination under this paragraph, the Department must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Department, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process. (8/00, 6/03)

(vi) For purposes of 261.4(a)(7) mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste. (6/03)

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided: (8/00)

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in 261.21) and/or toxicity for benzene (261.24, waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and

where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in 261.1(c). (8/00)

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied: (6/04)

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Department which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Department that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in 262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in paragraph (a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 264 and 265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that: (6/04)

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent (6/04)	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (a)(21)(ii) of this section. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

(22) [Reserved 6/04]

(23) [Reserved and Withdrawn 6/04]

(24) [Withdrawn 6/04]

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purpose of regulation under this subtitle, if such facility (12/92; 12/93, 6/03):

(i) Receives and burns only

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site if such overburden is handled in compliance with all applicable provisions of the S. C. Mining Act, Section 48-20-10 et seq., S. C. Code of Laws, 1976, as amended.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by 266.112 for facilities that burn or process hazardous waste (12/92).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for

any other characteristic, if it is shown by a waste generator or by waste generators that: (11/90)

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i) (A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are: (11/90; 12/93)

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling. (11/90; 12/92)

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling. (12/92)

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of

uranium ore), except as provided by 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of 261.4(b)(7), beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated: (12/92, 11/99)

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;
- (D) Phosphogypsum from phosphoric acid production;
- (E) Slag from elemental phosphorus production;
- (F) Gasifier ash from coal gasification;
- (G) Process wastewater from coal gasification;
- (H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
- (I) Slag tailings from primary copper processing;
- (J) Fluorogypsum from hydrofluoric acid production;
- (K) Process wastewater from hydrofluoric acid production;
- (L) Air pollution control dust/sludge from iron blast furnaces;
- (M) Iron blast furnace slag;
- (N) Treated residue from roasting/leaching of chrome ore;
- (O) Process wastewater from primary magnesium processing by the anhydrous process;
- (P) Process wastewater from phosphoric acid production;
- (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- (R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- (S) Chloride process waste solids from titanium tetrachloride production;
- (T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (b) of this section if the owner or operator: (11/99; 8/00)

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by 266.112 for facilities that burn or process hazardous waste (12/92).

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials' intended end use. (11/90; 12/92; 12/93)

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of section 261.24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under 40 CFR 280. (11/90)

(11) [Reserved]

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use (12/92).

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Subpart D of this part if these oil filters have been gravity hot-drained using one of the following methods: (12/93)

- (i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
- (ii) Hot-draining and crushing;
- (iii) Dismantling and hot-draining; or
- (iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products. (12/93)

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that: (8/00, 6/03)

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing; (6/03)

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends. (6/03)

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under 262 through 266, 268, 270, and 124 or to the notification requirements of South Carolina Hazardous Waste Management Act 44-56-120 and section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials. (11/90; 12/92)

(d) Samples.

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or 262 through 266, 268, 270, or 124 or to the notification requirements of section 3010 of RCRA and the South Carolina Hazardous Waste Management Act 44-56-120 when: (11/90; 12/92)

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in paragraphs (d)(1) (i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) Treatability Study Samples. (11/90; 12/94)

(1) Except as provided in paragraph (e)(2) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of parts 261 through 263 or to the notification requirements of SC 44-56-120 and Section 3010 of RCRA, nor are such samples included in the quantity determinations of 261.5 and 262.34(d) when (12/92):

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), South Carolina Public Service Commission or any other applicable shipping requirements; or

(B) If the DOT, USPS, South Carolina Public Service Commission or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(1) The name, mailing address, and telephone number of the originator of the sample;

(2) The name, address, and telephone number of the facility that will perform the treatability study;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under 261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(1) The amount of waste shipped under this exemption;

(2) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) The date the shipment was made; and

(4) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under paragraph (e)(2)(v)(C) of this section in its annual report (12/92, 9/98).

(3) The Department may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Department may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2)(i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste;

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e)(1) and (e)(2)(iii) through (vi) of this section. The generator or sample collector must apply to the Department and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed,

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to

which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Department considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this part, part 124, parts 262 through 266, 268, and 270, or to the notification requirements of SCHWMA 44-56-120 and Section 3010 of RCRA provided that the conditions of paragraphs (f) (1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f) (1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f) (1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU. (11/90; 12/92; 12/94)

(1) No less than 45 days before conducting treatability studies, the facility notifies the Department in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, onsite, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Department by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

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(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under 261.3 and, if so, are subject to parts 261 through 268, and part 270, unless the residues and unused samples are returned to the sample originator under the 261.4(e) exemption.

(11) The facility notifies the Department by letter when the facility is no longer planning to conduct any treatability studies at the site. (11/90)

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply: (8/00)

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (g)(2)(i) and (ii) of this section, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month. (6/89, 12/92)

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under 262 through 266, 268, 270 and 124, and the notification requirements of section 3010 of RCRA and the South Carolina

Hazardous Waste Management Act 44-56-60 and provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section (6/89, 11/90).

(c) When making the quantity determinations of this part and 262, the generator must include all hazardous waste that it generates, except hazardous waste that: (5/96)

(1) Is exempt from regulation under 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8; or (5/96)

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 260.10; or (5/96)

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 261.6(c)(2); or (5/96)

(4) Is used oil managed under the requirements of 261.6(a)(4) or (5/96)

(5) Is spent lead-acid batteries managed under the requirements of 266 subpart G; or (5/96)

(6) Is universal waste managed under 261.9 and 273. (5/96)

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) Hazardous waste when it is removed from onsite storage; or

(2) Hazardous waste produced by onsite treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or (6/89)

(3) Spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been counted once. (6/89)

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under 262 through 266, 268, R.61-79.270 and 124 and the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120 and section 3010 of RCRA: (11/90; 12/92)

(1) A total of one kilogram of acute hazardous wastes listed in sections 261.31, 261.32, or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in sections 261.31, 261.32, or 261.33(e).

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.] (12/93)

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (2) of this section to be excluded from full regulation

261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators

under this section, the generator must comply with the following requirements: (11/90, 12/92)

(1) Section 262.11;

(2) The generator may accumulate acute hazardous waste onsite. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under 262 through 266, 268, 270 and 124 and the applicable notification requirements of section 3010 RCRA and the applicable notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120. The time period of 262.34(a) for accumulation of wastes onsite, begins when the accumulated wastes exceed the applicable exclusion limit; (11/90, 12/92)

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an onsite facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is: (6/89)

(i) Permitted under 270;

(ii) In interim status under 270 and 265;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271; (12/92)

(iv) Permitted, licensed, or registered by the Department to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to R.61-107.258; (12/92, 5/96, 9/98)

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in R.61-107.257.5 through 257.30; or (9/98)

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or (5/96)

(vii) For universal waste managed under part 273, a universal waste handler or destination facility subject to the requirements of 273. (5/96)

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements: (6/89)

(1) Section 262.11;

(2) The conditionally exempt small quantity generator may accumulate hazardous waste onsite. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the

special provisions of 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of 263 through 266, 268, and 270 and 124 and the applicable notification requirements of section 3010 of RCRA and the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120. The time period of 262.34(d) for accumulation of wastes onsite begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms; (11/90, 12/92)

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an onsite facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under 270;

(ii) In interim status under 270 and 265;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271 (12/92);

(iv) Permitted, licensed, or registered by the Department to manage municipal solid waste, and, if managed in a municipal solid waste landfill is subject to R.61-107.258; (6/89, 12/92; 5/96, 9/98)

(v) Permitted, licensed, or registered by the Department to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in R.61-107.257.5 through 257.30; or (9/98)

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or (5/96)

(vii) For universal waste managed under part 273, a universal waste handler or destination facility subject to the requirements of 273. (5/96)

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation. (11/90)

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to subpart E of part 266 of this Regulation if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing,

blending, or other treatment is also so regulated if it is destined to be burned for energy recovery. (6/89)

(k) [Reserved; moved to 262 12/92]

261.6 Requirements for recyclable materials

(a) (1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled will be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through H of 266 and all applicable provisions in 270 and 124 (12/92):

(i) Recyclable materials used in a manner constituting disposal (subpart C);

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 264 or 265 (Subpart H); (11/90, 12/92)

(iii) Used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 264 or 265 or E of 266); (11/90)

(iv) Recyclable materials from which precious metals are reclaimed (subpart F);

(v) Spent lead-acid batteries that are being reclaimed (subpart G).

(3) The following recyclable materials are not subject to regulation under 262 through 266, or 268, 270 or 124 and are not subject to the notification requirements of the the South Carolina Hazardous Waste Management Act 44-56-120 and 3010 RCRA(11/90, 12/92, 6/03, 6/04):

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in sections 262.53, 262.56 (a)(1) - (4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 262 and provide a copy of the EPA Acknowledgement of Consent to the shipper transporting the shipment for export;(11/90)

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgement of Consent, must ensure that a copy of the EPA Acknowledgement of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

261.6 Requirements for recyclable materials

(ii) Scrap metal that is not excluded under 261.4(a)(13). (10/01);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 261.4(a)(12); (10/01, 6/03)

(iv) (A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under R.61-79.266.40(e) and so long as no other hazardous wastes are used to produce the hazardous waste fuel; (12/92, 5/96, 6/03)

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under R.61-79.266.40(e); and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under R.61-79.266.40(e); and

(v) US Filter Recovery Services XL waste (Subpart O). (6/03)

(vi) Used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery (2/92, 8/00, 9/01 6/03)

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of parts 260 through 268, but is regulated under 266 Subpart E. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed. (12/93)

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in 262.58(a)(1)) for purpose of recovery is subject to the requirements of part 262, subpart H, if it is subject to either the federal

manifesting requirements of Part 262, to the universal waste management standards of Part 273. (9/98)

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of 262 and 263 of these Regulations, and the notification requirements under 44-56-120 and section 3010 of RCRA, except as provided in paragraph (a) of this section (12/92).

(c) (1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, BB and CC of 264 and 265, and under 266, 268, 270, and 124 and the notification requirements of section 3010 RCRA and the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in 261.6(d).) (11/90, 12/92, 9/98)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under SCHWMA 44-56-120, and section 264.5 or section 265.5 and section 3010 of RCRA; (10/01)

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of 265.

(iii) Section 261.6(d) (12/92).

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 (12/92).

261.7 Residues of hazardous waste in empty containers

(a) (1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under 261 through 266, or 268, 124, and 270 or to the notification requirements of section 3010 RCRA and the South Carolina Hazardous Waste Management Act 44-56-120. (11/90, 12/92)

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under 261 through 266, and 268, 124, and 270 and to the notification requirements of section 3010 RCRA and the South Carolina Hazardous Waste Management Act 44-56-120 (11/90, 12/92).

(b) (1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an

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acute hazardous waste listed in sections 261.31, 261.32, or 261.33(e) of this regulation, is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or

(iii) (A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections 261.31, 261.32, or 261.33(e) of this regulation is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

261.8 PCB wastes regulated under Toxic Substance Control Act

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt from regulation under parts 261 through 265, and parts 268, 270, and 124, and the notification requirements of section 3010 of RCRA and the South Carolina Hazardous Waste Management Act 44-56-120 (11/90, 12/92)

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The wastes listed in this section are exempt from regulation under parts 262 through 270 except as specified in part 273 and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 273: (5/96, 8/00)

(a) Batteries as described in 273.2;

- (b) Pesticides as described in 273.3;
- (c) Thermostats as described in 273.4 and
- (d) Lamps as described in 273.5.

Subpart B - Criteria for Identifying the Characteristics of Hazardous Waste & for Listing Hazardous Waste

261.10 Criteria for identifying the characteristics of hazardous waste

(a) The Department shall identify and define a characteristic of hazardous waste in subpart C only upon determining that (12/92):

(1) A solid waste that exhibits the characteristic may: (11/90)

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

261.11 Criteria for listing hazardous waste

(a) The Department shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria (12/92):

(1) It exhibits any of the characteristics of hazardous waste identified in subpart C.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)

(3) It contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Department concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed: (12/92)

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (a)(3)(vii) of this section.

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate.

Substances will be listed on Appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.

(Wastes listed in accordance with these criteria will be designated Toxic wastes.)

(b) The Department list classes or types of solid waste as hazardous waste if there is reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste in Section 261.3 and found in section 1004(5) of RCRA.(10/01)

(c) The Department will use the criteria for listing specified in this section to establish the exclusion limits referred to in Section 261.5(c).

Subpart C - Characteristics of Hazardous Waste

261.20 General

(a) A solid waste, as defined in section 261.2, which is not excluded from regulation as a hazardous waste under section 261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this subpart.

[Comment: 262.11 sets forth the generators responsibility to determine whether his waste exhibits

one or more of the characteristics identified in this subpart (12/92)]

(b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable recordkeeping and reporting requirements under 262 through 266, 268, 270 and the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120 (11/90, 12/92).

(c) For purposes of this subpart, the Department will consider a sample obtained using any of the applicable sampling methods specified in Appendix I to be a representative sample within the meaning of 260.

[Comment: Since the Appendix I sampling methods are not being formally adopted by the Department, a person who desires to employ an alternative sampling method is not required to demonstrate the equivalency of his method under the procedures set forth in 260.20 and 260.21 (12/92)].

261.21 Characteristic of ignitability

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60°C (140° F) as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated by reference, see 260.11) or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated by reference, see 260.11), or as determined by an equivalent test method approved by the Department under procedures set forth in 260.20 and 260.21. (11/90, 12/92)

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Department under 260.20 and 260.21. (12/93)

(4) It is an oxidizer as defined in 49 CFR 173.151.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001 (12/92).

261.24 Toxicity characteristic (11/90)

261.22 Characteristic of corrosivity

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties: (12/94)

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 260.11. (12/93, 9/01)

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846, incorporated by reference in 260.11. (12/93)

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002. (12/92)

261.23 Characteristic of reactivity

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003. (12/92)

261.24 Toxicity characteristic (11/90)

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using

261.24 Toxicity characteristic (11/90)

the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 260.11, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at the concentration equal to or greater than the respective value given in that table. Where the waste contains less

than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section. (12/92, 12/93, 12/94, 6/03)

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous (12/92).

261.24(b) Table 1 Maximum Concentration of Contaminants for the Toxicity Characteristic (11/90)			
EPA HW # ¹	Contaminant	CAS No. ²	Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetrachloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	⁴ 200.0
D024	m-Cresol	108-39-4	⁴ 200.0
D025	p-Cresol	106-44-5	⁴ 200.0
D026	Cresol	⁴ 200.0
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichlorobenzene	106-46-7	7.5
D028	1,2-Dichloroethane	107-06-2	0.5
D029	1,1-Dichloroethylene	75-35-4	0.7
D030	2,4-Dinitrotoluene	121-14-2	³ 0.13
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachlorobenzene	118-74-1	³ 0.13
D033	Hexachlorobutadiene	87-68-3	0.5
D034	Hexachloroethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachlorophenol	87-86-5	100.0
D038	Pyridine	110-86-1	³ 5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloroethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloroethylene	79-01-6	0.5
D041	2,4,5-Trichlorophenol	95-95-4	400.0
D042	2,4,6-Trichlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chloride	75-01-4	0.2

¹ Hazardous waste number.

² Chemical abstracts service number.

³ Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

⁴ If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.